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Attorney's Docket: 2002DE106Serial No.: 10/510,086Art Unit 1793Response to Office Action of December 19, 2008**REMARKS/ARGUMENTS**

The Office Action mailed December 19, 2008 has been carefully considered together with each of the references cited therein. The amendments and remarks presented herein are believed to be fully responsive to the Office Action. Accordingly, reconsideration of the present Application in view of the following remarks is respectfully requested.

Applicant has amended the claims to more clearly recite what Applicant believes to be the invention. In claim 1 Applicant has incorporated the elements of claims 3 and 10 to recite that the conventional additives are selected from the group consisting of a suspension agent, anticaking agent, wetting agent, preservative, viscosity stabilizer and additive for influencing the rheology, and to recite that the pigment oil preparation is sprayed onto the surface of the fertilizer to be colored. Support for this amendment may be found in Applicant's specification and in original and previously presented claims 1, 3, and 10. Claim 9 was amended to more clearly recite that the pigment preparation is in an amount of 0.00001 to 0.015% by weight, based on the fertilizer. Support for the amendment to claim 9 may be found in Applicant's Specification on page 4 and in originally filed claims 9 and 10. Claims 3 and 10 were canceled. It is believed that no new matter has been introduced by this amendment and that no additional search is required.

Applicant's invention relates to a method for coloring a fertilizer by applying a pigment oil preparation to the fertilizer, wherein the pigment oil preparation consists of 5-60 weight percent of at least one organic pigment, 40-95 weight percent of a paraffin oil or a vegetable oil or a mixture thereof, 0 to 10 weight percent of a dispersant, and 0 to 5 weight percent of at least one conventional additive. Applicant discovered that the inventive method of coloring fertilizers with Applicant's pigment oil preparation resulted in a strong color intensity, a high light fastness and easy handling (See page 5, lines 7-13) In addition, the inventive pigment oil preparation remained highly flowable in spite of heat aging for weeks, as shown in Applicant's specification at page 6, lines 12-13.

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Claim 9 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The rejection of claim 9 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention should be withdrawn in view of Applicant's amendment which more clearly recites that the pigment preparation is in an amount of 0.00001 to 0.015% by weight, based on the fertilizer weight.

Claims 1-2 and 6-13 were rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teaching of WO 00/76649 A1 to Lofgren et al. (hereinafter referred to as WO '649) and U.S. Patent No. 6,262,153 to Webster et al. (hereinafter referred to as the '153 Patent). The rejection of claim 1, as amended, under 35 U.S.C. 103(a) as being unpatentable over the combined teaching of WO 00/76649 A1 to Lofgren et al. and U.S. Patent No. 6,262,153 to Webster et al. should be withdrawn for the reason that the 'WO 649 Publication is silent on using an organic pigment in a mineral oil composition to coat a particulate such as a fertilizer and the 'WO 649 Publication teaches away from any combination with the solid, wax based compositions of the '153 Patent. The 'WO 649 Publication discloses methods for coating a particulate product by using a coating suspension containing an organic phase and solid inorganic particles, but is silent on using an organic pigment in a mineral oil composition. The compositions of the '153 Patent are colored wax-based articles which comprise at least 75% by weight wax, a colorant and a UV absorber (See formula (1) column 2, line 35, and claim 1). The colorant of the '153 Patent is an organic pigment. There is no suspension disclosed in the '153 Patent. Although the '153 Patent discloses in the abstract that the solid, colored wax-based articles may be used for fertilizer coating, the '153 Patent does not disclose how such use as a fertilizer coating is to be made. Furthermore in the '153 Patent discloses that the UV absorber is required when the colorant is an organic pigment (See Abstract and claim 1). The 'WO 649 reference is silent on any UV absorber. Clearly no one skilled in the art would be motivated to combine the

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organic pigment of the '153 Patent into the 'WO Publication, without also requiring the UV absorber compound of formula (1). Applicant's invention as claimed discloses a method for coloring fertilizer particles by spraying a pigment oil mixture on the surface of the fertilizer particles. Applicant's pigment oil composition is closed and does not include a UV absorber, and further more is in the form of an oil, not a solid, colored waxed-based article. It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art. Furthermore, the 'WO 649 reference teaches away from the solid wax coating material of the '153 Patent as stated hereinbelow:

coating agent compositions. Coatings containing a lot of waxes easily solidify on the surface of the fertilizer granules and form uneven blotches without providing a sufficiently integral protective layer against wetting. When used in abundance, a wax-containing coating agent in a molten state can provide a fairly integral surface, but in addition to the problems with handling the product, one disadvantage is that when solidifying, the coating shrinks and cracks are formed. New solutions are also required to prevent caking. When a granular fertilizer is coated with an oil-based anti-caking agent, the oil tends to be absorbed into the pores of the fertilizer. In that case, the consumption of the coating agent increases and the amount on the surface of the fertilizer granule can remain too low. It is not always possible to increase the amount of talc or another powdering agent as would be necessary to prevent wetting or caking, because this would result in a dusty fertilizer.

Clearly, no one skilled in the art would be motivated to make the combination suggested by the examiner. Therefore, the rejection of claim 1, as amended, under 35 U.S.C. 103(a) as being unpatentable over the combined teaching of WO 00/76649 A1 to Lofgren et al. and U.S. Patent No. 6,262,153 to Webster et al. should be withdrawn for the reason that the 'WO 649 Publication is silent on using an organic pigment in a mineral oil composition to coat a particulate such as a fertilizer and the 'WO 649 Publication teaches away from any combination with the solid, wax based compositions of the '153 Patent, and for the reason that the '153 Patent requires the use of a UV absorber in combination with the organic pigment which is also not found in the 'WO 649 Publication.

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The rejection of claims 2, 6, 8 and 11-13, as amended, under 35 U.S.C. 103(a) as being unpatentable over the combined teaching of WO 00/76649 A1 to Lofgren et al. and U.S. Patent No. 6,262,153 to Webster et al. should be withdrawn for the reasons given in support of claim 1 from which they depend.

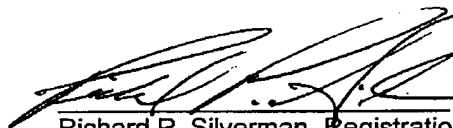
Claims 9, as amended was rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teaching of WO 00/76649 A1 to Lofgren et al. and U.S. Patent No. 6,262,153 to Webster et al., and further in view of WO 97/19030 to Tilokavichai et al. The rejection of claim 9 as amended under 35 U.S.C. 103(a) as being unpatentable over the combined teaching of WO 00/76649 A1 to Lofgren et al. and U.S. Patent No. 6,262,153 to Webster et al., and further in view of WO 97/19030 to Tilokavichai et al. should be withdrawn for the reasons given in support of claim 1 as amended from which claim 9 depends and for the reason that Applicant's claim 9 recites 0.00001 to 0.015% which falls outside the range recited in the Tilokavichai reference.

The rejection of claim 10 under 35 U.S.C. 103(a) as being unpatentable over the combined teaching of WO 00/76649 A1 to Lofgren et al. and U.S. Patent No. 6,262,153 to Webster et al., and further in view of WO 97/19030 to Tilokavichai et al. is moot in view of Applicant's amendment.

It is respectfully submitted that, in view of the above remarks, the rejections under §103 should be withdrawn and that this application is in a condition for an allowance of all pending claims. Accordingly, favorable reconsideration and an allowance of all pending claims are courteously solicited.

An early and favorable action is courteously solicited.

Respectfully submitted,



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